IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID NOLAN, et al.	:	
	:	CIVIL ACTION
v.	:	
	:	No. 01-83
COOPER TIRE & RUBBER CO.	:	

MEMORANDUM

Ludwig, J. **March , 2001**

Plaintiffs David Nolan et al. move to remand, 28 U.S.C. § 1447, and defendant Cooper Tire & Rubber Co. moves to stay this action pending a transfer petition ruling by the Judicial Panel on Multi-District Litigation.[1] The remand will be granted and the stay denied.

On December 14, 2000, this class action complaint was filed in the Court of Common Pleas of Philadelphia County alleging violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law (UTPCPL). CCP Cmplt. ¶¶ 54-63. The putative class consisted of all Pennsylvania residents who purchased a steel-belted radial tire manufactured by defendant between 1985 and the present, excepting recipients of tire-related bodily injury or property damage. Id. ¶ 47. The complaint asks for: (1) compensatory damages; (2) treble damages; (3) attorney's fees, costs, and interest; and (4) other relief – with a maximum total of

[1] On February 23, 2001, the Judicial Panel on Multidistrict Litigation issued an order transfering seventeen similar actions for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. See Transfer Order, Feb. 23, 2001.

$50,000 per class member. Id. at 14. No claim is made for injunctive relief or punitive damages.

Defendant's removal notice sets forth two grounds for federal jurisdiction – federal question and diversity. 28 U.S.C. §§ 1331, 1332. The first is that inasmuch as similar class actions have been filed in a number of states by a coordinated group of plaintiffs' lawyers, this action, in reality, is part of a national "citizens' recall." Def's. mem. at 2-4. Therefore, this area of state law, defendants argue, has been preempted by the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. §§ 30101-30169, and its regulations and standards – resulting in a federal question. Removal ¶¶ 4-6; Def's. mem. at 4-14. As to the second, the parties are completely diverse – and given that the relief requested is a recall, the jurisdictional amount at issue should be measured from the perspective of defendant's economic exposure. Removal ¶¶ 7-14; Def's. mem. at 16-22.

Plaintiffs' motion to remand contends that defendant has not demonstrated either basis for subject matter jurisdiction. "The person asserting jurisdiction bears the burden of showing that the case is properly before the court." Development Finance Corporation v. Alpha Housing & Health Care, Inc., 54 F.3d 156, 158 (3d Cir. 1995).

1. Federal Question – Jurisdiction under this theory exists if a federal question appears on the face of a well-pleaded complaint. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987); Goepel v. National Postal Mail Handler's Union, 36 F.3d 306, 309 (3d Cir. 1994). Here, the claim set forth in the complaint

is one of state law. However, an exception to the well-pleaded complaint rule occurs where there is federal law preemption. Caterpillar, 482 U.S. at 393; Goepel, 36 F.3d at 301. In this instance, a preemptive purpose having not been expressly articulated, defendant asserts that "Congress intended the [NTMVSA], 49 U.S.C. §§ 30101-30169, to vest [the National Highway Traffic Safety Administration] with exclusive jurisdiction over the types of claims and relief sought in this action." Removal ¶ 6. That inference is insupportable. Our Court of Appeals has held that "Congress did not intend all common law tort actions for design defects . . . to be expressly preempted by federal motor vehicle safety standards." Buzzard v. Roadrunner Trucking, Inc., 966 F.2d 777, 780 (3d Cir. 1992) (internal quotations omitted); see also Dorian v. Bridgestone/Firestone, Inc., 2000 WL 1570637 (E.D. Pa. Oct. 19, 2000) ("Defendants . . . cannot reasonably argue that the MVSA or NHTSA regulations preempt all state law claims concerning automobile defects."). Moreover, the current version of the NTMVSA states that "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. § 30103(e).

Furthermore, defendant's national recall argument is belied by the complaint. It does not ask for a recall.[2] As recently stated in Dorian, a similar

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[2] According to NHTSA's website, the remedy for a recall of "tires [or] equipment" is that "the manufacturer can either repair or replace." http://www.nhtsa.dot.gov/hotline/recallprocess.html (Feb. 6, 2001); see also 49 U.S.C. § 30120 (a)(1)(B). Plaintiffs do not ask for repair or replacement, but for (continued...)

case, "[e]ven assuming that federal law preempts any state law governing recalls, there is no showing that compensating plaintiffs for misrepresentation or breach of warranty conflicts with a NHTSA monitored voluntary recall." Dorian, 2000 WL 1570627 at *4.

2. Diversity – Diversity of citizenship exists but the amount in controversy threshold of $75,000 is not satisfied. The complaint claims damages for the value of the tires still in use, plus treble damages, and attorney's fees. According to plaintiffs' motion, "treble the cost of four replacement tires together with attorney's fees, costs, and interest, would not exceed a total value of $5,000" per plaintiff. Pltfs. mem. at 3. Defendant responds that because the tires are alleged to be dangerous and to involve a risk of personal injury, a consequential damages claim could exceed the jurisdictional amount. However, defendant's case authority involves declaratory or injunctive relief, neither of which is requested here.[3] Removal ¶10-11; Def's. mem. at 17-18.

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[2](...continued)
money damages – making this not a request for a recall. Defendant argues that the Pennsylvania UTPCPL requires that "in order for a consumer to recover damages . . . he or she must return the offending product to the manufacturer." Def's. mem. at 3 (citing Young v. Dart, 630 A.2d 22, 26-27 (Pa. Super. Ct. 1993)). However, the fact that the tires must be returned would not make their claim a "de facto recall" because the return would be for money damages under the UTPCPL, not repair or replacement.

[3] Also, in one instance there was a claim for emotional distress. Angus v. Shiley, Inc., 989 F.2d 143, 145-46 (3d Cir. 1993). Here, no claim is made for intangible damages.

The other grounds given for satisfying the jurisdictional amount must be rejected as well. According to the notice, the claims for attorney's fees and the "equitable relief . . . constitute[] a common and undivided interest of the putative class as a whole and would not be separately allocable among individual plaintiffs." Removal ¶¶ 12-14; Def's. mem at 19-20. In other words, a tire recall and replacement would cost defendant more than $75,000. Removal, ex. 7 (aff. of Stephan F. Cramer). However, equitable or declaratory relief is not explicitly sought. Furthermore, the law of this circuit is that in "a diversity-based class action seeking primarily money damages, allowing the amount in controversy to be measured by the defendant's cost would eviscerate [the] holding that the claims of class members may not be aggregated in order to meet the jurisdictional threshold." Packard, 994 F.2d at 1050; see also Pierson v. Source Perrier, 848 F. Supp. 1186, 1189 (E.D. Pa. 1994) ("the longstanding rule in this circuit is that, for purposes of determining the amount in controversy, the value of equitable relief must be determined from the viewpoint of the plaintiff rather than the defendant"). Therefore, the individual claims cannot be combined even if, as defendant maintains, the action could be viewed as requiring equitable as opposed to monetary relief.

In three similar class action suits against the same defendant, remands were ordered in other districts. See Krystyan v. Cooper Tire & Rubber Co., No. 00-40431 (E.D. Mich.) (order dated Jan. 22, 2001); Talai, et al. v. Cooper Tire and Rubber Co., No. 00-5694(D.N.J.) (unpublished letter-opinion dated Jan. 5, 2001);

D'Alessio v. Cooper Tire & Rubber Co., No. 00-395 (D.Me.) (order dated Jan. 31, 2001).[4]

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[4] Three decisions have not remanded. Namovicz v. Cooper Tire & Rubber Co., Civil No. WMN-00-3676 (D. Md.) (order and memorandum dated Feb. 26, 2001); Alto v. Cooper Tire & Rubber Co., No. 00-361 (D. Ak.) (order dated Jan. 30, 2001) (not deciding jurisdictional issue but granting defendant's motion to stay pending determination by the Judicial Panel on Multi-District Litigation); Rodriguez-Montes v. Cooper Tire & Rubber Co., Civ. No. 00-2543 (D. P.R.) (order dated Jan. 19, 2001) (finding the jurisdictional amount to be met).

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ORDER

Ludwig, J.

AND NOW, this day of March, 2001, the motion to remand of plaintiffs David Nolan et al. is granted,[1] 28 U.S.C. § 1447, and defendant Cooper Tire & Rubber Co.'s motion to stay is denied. A memorandum accompanies this order.

Edmund V. Ludwig, J.

[1] As to the lack of diversity jurisdiction, this finding is premised on the limitation of plaintiffs' compensatory damages claim to tire replacement cost.